IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGICAL CIVIL JURISDICTION.

WRIT PETITION NO.942 2004

Shrikant Bharamu Kapase)..Petitioner

versus

State of Maharashtra & Ors)..Respondents

Mr.G.M.Savagave, for the Petitioner
Mr. C.R. Sonawane, A.G.P. for Respondent Nos.1 to 3.

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CORAM; F.I. REBELLO & S.P.KUKDAY,JJ.

DATED; 4TH FEBRUARY, 2005

P.C.:

1. Rule. Heard forthwith.

2. It is the case of the petitioner himself that he was appointed by letter dated 29th June, 1994. In terms of the G.R. dated 22nd October, 1996 cases that of the petitioner could be considered provided they had less than 10 years and more than 3 years service as on 30th November, 1995. The petitioner, therefore, would not be completing three years as on 30th November, 1995 and, therefore, clearly not eligible for consideration.

3. Apart from that the Apex Court in **A.Umarani vs. Registrar, Co-operative Societies & Ors., (2004) 7 SCC 112** has set out the guidelines under which the appointment can be made. The matter came up for

consideration before one of us (F.I. Rebello, J.) in Writ Petition NO.821 of 2003 Mumbai Mazdoor Sangh vs. Air India Limited which was disposed of by order dated 14th December, 2004. Adverting to the judgment in A. Umarani (supra) the following tests for appointment/regularisation had been set out:-

a) Regularisation cannot be mode of recruitment by any State within the meaning of Article 12. It is a settled proposition that the appointment made in violation of the mandatory provision of the statue and in particular ignoring the minmum educational qualification and other qualifications would be wholly illegal and such illegality cannot be cured by taking recourse of regularisation.

b) Those who come by back door should go through that door.

c) Regularisation further cannot be given to the employees whose services are ad-hoc in nature.

d) No regularisaion is permissible in

exercise of the Statutory power conferred under Article 12 of the Constitution of India when the appointments are in contravention of the statutory rules.

e) It is trite that appointments cannot be made on political considerations and in violation of the Government directions for reduction of establishment expenditure or filling up of vacant posts or creating new posts including regularisation of daily wage employees.

f) There is no scope for regularisation unless the appointments were made on a regular basis.

g) If the employees are appointed for the purpose of a scheme, they do not acquire vested right of continuance after the project is over.

4. It would, therefore, be clear that in such appointments there can be no case of regularisation. No writ, therefore, could have been issued by this Court in such matters. We reiterate the said

proposition as carved out from the judgment in A.Umarani (supra). For the aforesaid reasons Rule discharged. There shall be no order as to costs.

5. Considering the law as laid down by the Apex Court in **A.Umarani vs. Registrar, Co-operative Societies & Ors., (2004) 7 SCC 112** the State Government may take steps to issue G.R. in the matter of regularisation strictly in terms of the judgment in A. Umarani (supra) and as explained by this Court in this Judgment.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)